It may be noted, however, that two cases often cited, are not in point, *Moore* v. *Lyons* (1840) 25 Wend. 119, involving a question of survivorship, and *Livingston* v. *Greene* (1873) 52 N. Y. 118, a question of vesting of remainders. The New York courts are eager to seize upon slight expressions to defeat the rule and to give the words there "natural import." *Benson* v. *Corbin* (1895) 145 N. Y. 351, 359; *Washbon* v. *Cope* (1895) 144 N. Y. 287.

The recent case of *Fifer* v. *Allen* (Ill. 1907) 81 N. E. 1105 throws an interesting light upon the present status of the rule. The court recognized the rule, but held that the words should be construed in their "natural and primary" sense; and that therefore the contingency was referable to a death as well before as after that of the testator. If this is a sound way at arriving at the testator's intent it strikes at the existence of the rule itself.

SUSPENSION OF THE POLICE POWER.—It is usually maintained that a State cannot divest itself of its governmental power; that to this rule the taxing power is only a nominal exception, Cooley, Const. Lim. (7th Ed.) 400; and that the police power is no exception at all. *Stone* v. *Mississippi* (1879) 101 U. S. 814. Yet the application of the principle that the State cannot barter away its police power has been confined to cases where to enforce the State's self-imposed restriction would endanger the public health, safety, or morals, *Stone* v. *Mississippi, supra; Fertilizing Co.* v. *Hyde Park* (1877) 97 U. S. 659; *Butchers' etc. Co.* v. *Crescent City Co.* (1884) 111 U. S. 746; *Beer Co.* v. *Massachusetts* (1877) 97 U. S. 25, whereas the scope of the police power extends also to laws designed for the protection of the public welfare. 5 COLUMBIA LAW REVIEW 462; 7 id. 322. There remains a broad region wherein the State may bind itself with regard to matters which fall nevertheless within the police power. Thus it is now established that a city may, under proper legislative sanction, make binding contracts fixing rates of fare, 2 COLUMBIA LAW REVIEW 487; *Cleveland* v. *Cleveland City Ry. Co.* (1904) 194 U. S. 517; contra, *Laurel Fork R. R. Co.* v. *W. Va. Transp. Co.* (1884) 25 W. Va. 324, or of water, *Los Angeles etc. Co.* v. *Los Angeles* (1898) 88 Fed. 720, affirmed 177 U. S. 558; *Omaha Water Co.* v. *City of Omaha* (1906) 147 Fed. 1, or precluding the city from establishing municipal water works, *Walla Walla* v. *Walla Walla Water Co.* (1898) 172 U. S. 1; *Vicksburg* v. *Vicksburg Waterworks Co.* (1906) 202 U. S. 453, thus divesting itself, at least temporarily, of some of its police powers. *Budd* v. *New York* (1892) 143 U. S. 517; *New Orleans Waterworks Co.* v. *Rivers* (1885) 115 U. S. 674. Upon analogous principles exclusive public service franchises granted by duly authorized municipalities have been protected against subsequent legislation. *New Orleans Gas Co.* v. *Louisiana Light Co.* (1885) 115 U. S. 212; *Vicksburg* v. *Vicksburg Waterworks Co., supra; City Ry. Co.* v. *Citizens' R. R. Co.* (1896) 166 U. S. 557. The effect of these authorities—that a state can by contract abandon an inherent governmental attribute—whatever its convenience to municipalities, involves a difficulty in political theory which cannot be evaded by the pretence that a temporary suspension of the power is merely one way of exercising it; since the power is continuing in its nature, and cannot be exhausted by a

single exercise. *R. R. Commission Cases* (1886) 116 U. S. 307; *Villavaso* v. *Barthet* (1887) 39 La. Ann. 247; *Rogers etc. Co.* v. *Fergus* (1899) 178 Ill. 571, affirmed 180 U. S. 624. Owing to two rules of construction, however, the difficulty arises in comparatively few cases. One rule is that the authority of a municipal corporation to make a contract surrendering its police power must either be express, or if implied, must be inferable of necessity. *Freeport Water Co.* v. *Freeport City* (1901) 180 U. S. 587; *Detroit Citizens' Street Ry. Co.* v. *Detroit Ry.* (1897) 171 U. S. 48. The other is that in order to find the existence of such a contract, the evidence of contractual intent on the part of the government must be so clear as to be susceptible of no other construction. *Knoxville Water Co.* v. *Knoxville* (1903) 189 U. S. 434; *Stanislaus County* v. *San Joaquin etc. Co.* (1904) 192 U. S. 201; *Ruggles* v. *Illinois* (1883) 108 U. S. 526. Provision for maxima rates may not, under this rule, suffice to establish a contractual right to charge up to the maximum. *Rogers etc. Co.* v. *Fergus, supra; Knoxville Water Co.* v. *Knoxville, supra.* A similar bulwark to the position of the government exists in the cases where exclusive franchises have been granted, since their validity has been often denied on the ground that they were monopolies, and hence that the State never could have intended to grant them. *Los Angeles etc. Co.* v. *Los Angeles, supra,* 732.

Two cases recently decided illustrate the operation of these rules of construction. In *City of Bessemer* v. *Bessemer Waterworks Co.* (Ala. 1907) 44 So. 663 the city had power to provide "by contract, ownership of waterworks, or otherwise" for a municipal water supply, and to regulate water rates. It was held that an accepted ordinance fixing the maxima rates for thirty years would be upheld against a subsequent ordinance reducing them. Here the proofs of the city's power and intention to contract were clear and convincing. On the other hand, in *Home etc. Co.* v. *Los Angeles* (Cal. 1907) 155 Fed. 544, the city's power to fix rates by contract was of dubious implication, and it was held that under the two rules above noted a contract was not made out from an accepted ordinance fixing maxima telephone rates for fifty years. A distinction is sometimes made between a city's power to fix and regulate rates, which is a governmental function, and its power to provide for works of public utility, in the exercise of which it acts in a corporate capacity; *Freeport Water Co.* v. *Freeport City, supra; Illinois etc. Bank* v. *Arkansas City* (1896) 76 Fed. 271; but this merely relieves contracts involving the latter power from the peculiar rules of construction applicable to alleged surrenders of governmental functions. *Illinois etc. Bank* v. *Arkansas City, supra,* 293. It does not, as apparently indicated in *Omaha Water Co.* v. *City of Omaha, supra,* 6, deprive a contract involving the exercise of both functions of its character as a suspension of the police power, in so far as rate-fixing provisions are concerned. Both the principal cases are properly decisive of this point, since in each a contract providing for a supply of public utilities and fixing rates was treated as a suspension of the police power.

ASPECTS OF THE MAXIM OF UNCLEAN HANDS.—The equitable maxim requiring "clean hands" of the complainant, being a universal guide for the granting of any equitable relief, the iniquitous conduct need not be proved